

Mortgage Servicing Calls: Why the Proposed Exemption is Necessary

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MBA

What Requires Mortgage Servicers to Call Borrowers?

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Agency	Required Contact
CFPB Mortgage Servicing Rules	Telephone or in-person contact by the 36 th day of delinquency
FHA	Telephone contact within 20 th day of delinquency; at least 2 times per week until contact established or determine property is vacant or abandoned
Fannie Mae and Freddie Mac	Outbound contact attempts, including text and telephone, by the 36th day of delinquency and every 5 days until contact made, delinquency resolved, or certain other events occur
Treasury – Home Affordable Modification Program (HAMP)	Minimum of 4 telephone calls to the last known phone numbers of record, at different times of the day, within 30 day period
VA Mortgage Servicing Rules	Telephone contact no later than the 20 th day of delinquency
USDA	Attempt telephone or written contact before the account becomes 20 days past due; USDA recommends making personal contact with a delinquent borrower until the delinquency is cured
California, Nevada, and Washington State Pre-Foreclosure Rules	<p>Telephone and / or in-person “initial contact” or due diligence required before issuing or recording a Notice of Default.</p> <p>Due diligence requires telephone contact at the primary telephone number on file at least three times at different hours and on different days.</p>

How Are These Calls Different than “Robocalls”?

- These communications are **consumer-focused**.
- For example, the GSEs provide **best practices** to communicate and build trust with consumers:
 - “Build trust with the borrower within the first 10-15 seconds by establishing empathy and a desire to help identify and discuss with the borrower ... the most appropriate options for delinquency resolution.”
 - “Hello my name is ____ and I am with _____. I see that you are behind in making your mortgage payments and I would like to talk more and see if there is anything we can do to help you get back on track.”
 - *Communicating with Borrowers: Collections and Loss Mitigation Reference Guide*, Freddie Mac (July 2015)
- Other federal laws provide **protections to consumers** for these calls.
 - For example, the FDCPA and the CFPA prohibit unfair, deceptive and abusive acts and practices.
- The industry is **heavily regulated** at the federal and state levels.
 - Supervisory examination and enforcement action jurisdiction.

Why Are Mortgage Servicers Concerned About the TCPA?

- Creditors and servicers have been ***obtaining prior express consent*** by providing clear disclosure to credit applicants and borrowers that provision of a telephone number to the creditor or servicer authorizes the creditor or servicer to contact the borrower at any number the borrower provides.
 - challenges with the duration of these loans
 - mortgage servicing transfers
- Even if a mortgage servicer has prior express consent, the servicer is ***still at risk*** of alleged violations of the TCPA.
 - reassignment of the telephone number without any knowledge by the servicer
 - alleged revocation of prior express consent
- These ***risks are not hypothetical***; they are real.
- A professional plaintiff recently admitted to purchasing as many as 35 cell phones specifically to ***manufacture lawsuits***.
- These lawsuits expose mortgage servicers to ***uncapped penalties*** for calls made to comply with outbound call requirements.

Why Did FHFA Urge the Commission to Exempt Mortgage Servicing Calls?

- FHFA has significant firsthand experience about how to effectively communicate with mortgage borrowers.
- FHFA worked with other federal regulators to create outbound call requirements.
- FHFA explained the need for relief from the prior express consent requirements under the TCPA to facilitate effective communications between mortgage servicers and borrowers.
- FHFA concluded: ***“Requiring mortgage servicers to have the consumer’s express consent to be contacted or face potential liability under the TCPA adversely impacts outreach efforts for loss mitigation and homeownership preservation.”***
- The Commission has the authority to ensure the TCPA does not harm any mortgage borrower’s ability to receive timely, live communications from their mortgage servicer.